



## **CT FAIR HOUSING CENTER**

### **STATEMENT OF JEFF GENTES OF THE CONNECTICUT FAIR HOUSING CENTER REGARDING THE FORECLOSURE MEDIATION PROGRAM**

Members of the Committees: thank you for inviting the Connecticut Fair Housing Center to speak today. My name is Jeff Gentes, and I am the Foreclosure Prevention Staff Attorney at the Center. The Connecticut Fair Housing Center is a non-profit organization providing, among other things, legal resources and assistance to homeowners facing foreclosure. We strongly support reauthorizing and updating the successful Foreclosure Mediation Program.

At the Center we are on the front lines of the foreclosure crisis. We help homeowners resolve their mortgage difficulties by working with their housing counselors, providing advice, representing them in court and in mediation, supporting pro bono attorneys, presenting at homeowner clinics, and publishing and distributing a guide for self-representation. Too often we see a path to keep people in their homes in a way that makes more financial sense for the lender than moving to foreclosure – but getting to that solution is more difficult than it should be. For many homeowners, hiring a lawyer is impractical when they are already struggling financially, the court system is intimidating, and it is not easy to deal with mortgage servicers whose incentive is to push forward with foreclosures.

While everyone knows failing to resolve mortgage difficulties through the courts leads to a foreclosure, and foreclosures cost homeowners their homes, the costs to cities and towns is not as obvious. Towns often spend more than \$19,000 in police, fire, and maintenance costs per foreclosure while neighbors, depending on the study, see their property values plummet from \$2,000 to \$6,800 per foreclosure in Connecticut.

The Connecticut Legislature recognized these obstacles and costs and reacted to the growing foreclosure crisis two years ago by creating the Foreclosure Mediation Program. The Program offers borrowers a way to talk to someone representing the servicer and helps ensure that homeowners have a chance to keep their homes. Being in a small conference room with a servicer's attorney and an impartial mediator is also far less intimidating than a courtroom with only the servicer's attorney and a judge. The Program has kept more than 7,400 people in their homes by helping them navigate the court system and reach their servicer, leading to more than \$140 million in savings for our towns.

Even though two years have passed since the Program was enacted, we see few signs that the foreclosure crisis will disappear – if anything, it will get worse. The number of Connecticut homeowners who are more than 90 days late on their mortgage has risen to 1 out of 12 – a new

high. The job market's outlook remains dismal, and today's job losses are tomorrow's foreclosure filings. We also expect another tranche of toxic loans – this time “resetting” Payment Option ARMs – to lead to new filings. And while helpful, the federal government's loan modification program, which most national mortgage servicers have joined, is not the solution.

Given that the foreclosure crisis isn't going away anytime soon, we applaud the bills introduced in the Housing Committee that would reauthorize the Program. Given that reducing foreclosures will continue to make sense, even after the crisis passes, we support eliminating the Program's sunset date altogether.

While we are in this crisis we need to ensure that the Program has the resources to accomplish its goals. Increased foreclosure filings are one burden. Extended mediations caused by mortgage servicers present another challenge. Foreclosures are more profitable for servicers than modifications, and servicers will act accordingly unless they have incentives to mediate. And while the Program is helpful in facilitating communication, that communication is often unproductive. The Judicial Branch issued Standing Orders in January 2010 which state what should be obvious – for instance, parties must mediate in good faith, or else face sanctions. The Orders should be codified, as House Bill 5369 would do. But the Orders are not enough: courts and mediators should have guidance on what constitutes good faith and what are appropriate sanctions.

House Bill 5410 has that guidance, and helps counter the incentives the servicer has to move towards foreclosure. It also codifies the Standing Orders, and eliminates the Program's sunset date. And while the Mediation Program was innovative when first created, states which used the Program as a model have added improvements of their own. House Bill 5410 reflects recent innovations from states like Indiana and Maine.

House Bill 5410 does contain a glitch – as drafted, it would only apply to mediations for cases that started during the Program's first year. Before enacted, it must be amended to apply to all mediations and we would be happy to work on an amendment to this bill which would address this drafting error.

There are other good ideas for reducing the strain on the Program, and for reducing foreclosures. Mediation is not the only forum for resolving mortgage difficulties. Borrowers must continue to stay in contact with their servicer until the process is complete. One of the most common frustrations our clients face – especially pre-mediation – is the inability to talk to someone who is responsible for their mortgage account. Each phone call leads to a new person, and the lack of consistent information compounds the frustration. Senate Bill 225, which has bi-partisan support from the Judiciary Committee, would help reduce the delay inherent in dealing with the inexperienced, undertrained, and overwhelmed servicer staff by requiring that homeowners be provided, at the time foreclosure begins, with contact information of someone responsible for and with authority to resolve their account. Homeowners would be able to start the process before mediation begins and, perhaps, not need mediation – this would mean fewer mediation sessions and less strain on the Foreclosure Mediation Program.

We can build on the Program's success so far. Roberta Palmer discussed three groups of cases earlier this afternoon – homeowners who have stayed in their homes, homeowners who have not, and those whose mediation sessions are pending. If we enacted the reforms we discussed, we could move more homeowners from the latter two groups – especially the homeowners who have been wrongfully denied loan modifications, and homeowners who have been stuck in limbo – into the Program's success stories.

We at the Connecticut Fair Housing Center strongly support removing the Foreclosure Mediation Program's sunset clause and updating the Program. You have before you several bills that would collectively accomplish that goal. The ideal bill or collection of bills would eliminate the sunset date, codify the Standing Orders, provide for disclosure of servicer contact information earlier in the foreclosure process, and update the Program. Homeowners facing foreclosure will always be at a disadvantage – they lack the resources of the servicer and the experience of the servicers' attorneys. But we can make the playing field more level, and hold servicers who abuse the mediation system accountable.

The Center strongly supports the Foreclosure Mediation Program, and will work to ensure that it is reauthorized and updated. Thank you for your time. I am happy to answer any questions you may have.

